

# AML PACKAGE – CUSTOMER DUE DILIGENCE

## AMLA’S CONSULTATION ON THE DRAFT RTS

### AMAFI’s answer

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*AMAFI is the trade association representing financial markets’ participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.*

AMAFI thanks the AMLA for the opportunity to respond to the consultation on the draft RTS on customer due diligence mandated by the AMLR.

The harmonisation of customer due diligence measures at the European level is key to foster a consistent application across the European Union and help ensure fairer competition, including by preventing forum shopping by foreign institutions seeking to establish themselves in the Union.

This harmonisation presents also an opportunity to achieve much-needed consistency of requirements applicable within financial groups and to reduce compliance costs, although such reduction will probably be negligible given the additional burden resulting from the strengthened requirements introduced by the AMLR.

While combating money laundering and terrorist financing (ML/TF) is essential to safeguarding the integrity of the European economy and society, this fight must remain aligned with the European Commission’s objectives of reducing unnecessary burdens and promoting simplification. Harmonisation should not mean defaulting to the most restrictive approaches but rather should involve streamlining requirements and selecting the most relevant and effective.

Against this background, AMAFI notes that Article 1 of the draft RTS establishes the risk-based approach as a core principle governing the application of the RTS as a whole. This principle should guide the definition of the provisions of the RTS on customer due diligence and allow obliged entities to exercise judgement in calibrating application in line with the nature, scale and ML/TF risks of their activities.

In addition, notwithstanding the objective of harmonization, certain obligations covered by the draft RTS are currently subject to differing interpretations across Member States, in particular with regard to documentation, verification standards and the application of proportionality. In this context, AMAFI underlines the importance of AMLA's role, in cooperation with national competent authorities, in ensuring supervisory convergence and supporting a consistent, proportionate and risk-based application of the RTS across the Union, including where appropriate through guidance.

***Question 1: Do you agree with the proposals set out in these draft RTS? If you do not agree, please specify: (I) the provision concerned; and (II) the rationale for your position. Please provide concrete drafting proposals to resolving the issue and explain why the measure you propose would be more appropriate.***

### ***Amendment 1***

#### **Article 2 – Information to be obtained in relation to names**

##### *Text proposed by the AMLA*

ii) In relation to the name of a legal entity as referred to in Article 22(1), point (b)(i), and other organisations that have legal capacity under national law as referred to in Article 22(1), point (d)(i), of Regulation (EU) 2024/1624, obliged entities shall obtain the registered name and the trade name where it differs from the registered name.

##### *AMAFI Amendment*

ii) In relation to the name of a legal entity as referred to in Article 22(1), point (b)(i), and other organisations that have legal capacity under national law as referred to in Article 22(1), point (d)(i), of Regulation (EU) 2024/1624, obliged entities shall obtain the registered name and the trade name where it differs from the registered name, **when such information is available in the commercial register.**

#### *Justification*

The collection of trade names should be limited, in line with the principle of proportionality, to those recorded in official commercial registers. Indeed, depending on the jurisdiction, trade names are not systematically included in commercial registers, and a single entity may use multiple trade names across different geographical areas. Requiring the exhaustive collection of such information would therefore lead to an unnecessary collection of data, without ensuring its reliability or providing meaningful added value. Accordingly, this obligation should be limited to trade names listed in the register.

AMAFI proposes the above amendment.

## **Amendment 2**

### **Article 3 – Information to be obtained in relation to addresses**

#### *Text proposed by the AMLA*

The information on the address as referred to in provisions of Article 22(1) of Regulation (EU) 2024/1624 shall consist of the following information:

- (a) the full country name or the abbreviation in accordance with the International Standard for country codes (ISO 3166);
- (b) the city, or its nearest alternative;
- (c) where available, postal code, street name, post boxes, building number and the apartment number.

#### *AMAFI Amendment*

The information on the address **of the customer, any person purporting to act on behalf of the customer, and the natural persons on whose behalf or for the benefit of whom a transaction or activity is being conducted** as referred to in provisions of Article 22(1) of Regulation (EU) 2024/1624 shall consist of the following information:

- (a) the full country name or the abbreviation in accordance with the International Standard for country codes (ISO 3166);
- (b) the city, or its nearest alternative;
- (c) where available, postal code, street name, post boxes, building number and the apartment number.

**For the purposes of Article 22(2) and 22(7) of Regulation (EU) 2024/1624, for beneficial owners and senior managing officials only, obliged entities may decide to obtain the address of the registered office of the legal entity instead of the senior managing official's residential address and country of residence.**

#### *Justification*

Article 3 of this draft RTS, by reference to Article 22(1) of the AMLR Regulation, applies to the client, the person purporting to act on behalf of the client, and to the natural persons on whose behalf or for whose benefit a transaction or activity is carried out. Beneficial owners and senior management officers therefore do not fall within the scope of this article. Consequently, AMAFI propose the above amendments.

### **Amendment 3**

#### **Article 4 – Specification on the provision of the place of birth**

*Text proposed by the AMLA*

The information on place of birth as referred to in Article 22(1), point (a)(ii), of Regulation (EU) 2024/1624 shall consist of at least the country name. Should the identity document, passport or equivalent of the customer provide additional information on place of birth, such information shall be collected.

*AMAFI Amendment*

The information on place of birth as referred to in Article 22(1), point (a)(ii), of Regulation (EU) 2024/1624 shall consist of at least the country name. Should the identity document, passport or equivalent of the ~~customer~~ **natural person** provide additional information on place of birth, such information shall be collected.

*Justification*

The obligation to collect information on the place of birth does not apply solely to the customer, but also to other natural persons in respect of whom obliged entities are required to collect such information under Regulation (EU) 2024/1624. It seems that the use of the term "customer" in the original drafting is therefore too restrictive.

AMAFI therefore proposes to replace the term "customer" with the term "natural person".

### **Amendment 4**

#### **Article 5 – Specification on nationalities**

*Text proposed by the AMLA*

For the purposes of Article 22(1), point (a)(iii), of Regulation (EU) 2024/1624, obliged entities shall obtain information on all nationalities or, where applicable, the statelessness and refugee or subsidiary protection status of the customer, any natural person purporting to act on behalf of the customer, and the natural persons on whose behalf or for the benefit of whom a transaction or activity is being conducted.

*AMAFI Amendment*

For the purposes of Article 22(1), point (a)(iii), of Regulation (EU) 2024/1624, obliged entities shall obtain information on all nationalities or, where applicable, the statelessness and refugee or subsidiary protection status of the customer, any natural person purporting to act on behalf of the customer, and the natural persons on whose behalf or for the benefit of whom a transaction or activity is being conducted.

**For the purposes of Article 22(6) of Regulation (EU) 2024/162, where a natural person holds multiple nationalities and declares them in good faith, obliged entities shall be required to verify only one of those nationalities.**

### Justification

While it may be relevant to collect information on all nationalities, in particular for sanctions or risk assessment purposes, requiring the verification of each nationality would be disproportionate.

In practice, this would oblige customers to provide several identity documents, thereby increasing the operational burden for obliged entities and extending onboarding timelines, without providing clear added value in terms of mitigating money laundering and terrorist financing risks.

Verifying one nationality on the basis of a reliable identity document is sufficient to establish the identity of the individual, while additional nationalities may be recorded based on the customer's declarations (made in good faith), unless specific risk factors justify further verification.

The amendment proposed by AMAFI, in line with Recital 3 of the draft RTS, therefore ensures effective risk mitigation, compliance with the principles of proportionality and risk-based approach, as well as operational feasibility.

### **Amendment 5**

#### **Article 6 (1.) – Documents for the verification of the identity**

##### *Text proposed by the AMLA*

1. For the purposes of verifying the identity of the person in accordance with Article 22(6), point (a), and Article 22(7), point (a) of Regulation (EU) 2024/1624, a document shall be considered equivalent to an identity document or passport if it meets all of the following conditions:
  - a. it is issued by a state or public authority;
  - b. it contains all names and surnames and the holder's date of birth;
  - c. it contains information on the date of expiration and a document number;
  - d. it contains a facial image and the signature of the document holder;
  - e. it contains security features to ensure authenticity.

##### *AMAFI Amendment*

1. For the purposes of verifying the identity of the person in accordance with Article 22(6), point (a), and Article 22(7), point (a) of Regulation (EU) 2024/1624, a document shall be considered equivalent to an identity document or passport if it meets all of the following conditions:
  - a. it is issued by a state or public authority;
  - b. it contains **all at least the** name and surname **(and, if available, all names and surnames)** and the holder's date of birth;
  - c. it contains information on the date of expiration and a document number;
  - d. it contains a facial image and the signature of the document holder;
  - e. it contains security features to ensure authenticity.

### Justification

The requirement to obtain all names and surnames may prove difficult to fulfil in practice, as some foreign identity documents do not include all of the holder's names and surnames. This would place obliged entities in an impossible position, as they would be required to ask the person to declare all their names and surnames, yet would be unable to verify that information against the identity document presented.

AMAFI therefore proposes the above amendment.

### **Amendment 6**

#### **Article 6 (3.) – Documents for the verification of the identity**

##### *Text proposed by the AMLA*

3. Obligated entities shall take reasonable steps to ensure that all documents obtained for the verification of the identity of the natural person pursuant to Article 22(6), point (a) and Article 22(7), point (a) of Regulation (EU) 2024/1624, as referred to in paragraphs 1 and 2, are authentic and have not been forged or tampered with.

##### *AMAFI Amendment*

3. ~~Obligated entities shall take reasonable steps to ensure that all documents obtained for the verification of the identity of the natural person pursuant to Article 22(6), point (a) and Article 22(7), point (a) of Regulation (EU) 2024/1624, as referred to in paragraphs 1 and 2, are authentic and have not been forged or tampered with.~~ Obligated entities shall take reasonable steps and apply appropriate measures, in accordance with the risk-based approach, to verify the apparent authenticity of the documents obtained for the purposes of identity verification pursuant to Article 22(6), point (a) and Article 22(7), point (a) of Regulation (EU) 2024/1624, as referred to in paragraphs 1 and 2. Such steps shall aim to detect any manifest indications of forgery or tampering.

### Justification

Obligated entities cannot be expected to substitute for sovereign authorities in the formal authentication of identity documents, as they neither possess the legal prerogatives nor the institutional competence required to perform such functions.

Accordingly, obliged entities should be required to undertake only reasonable measures aimed at verifying the apparent authenticity of identity documents provided by customers, without extending to their formal authentication.

In addition, this requirement should be implemented in accordance with a risk-based approach, ensuring that verification efforts are proportionate and that resources are allocated effectively to address money laundering and terrorist financing risks.

It should also be stressed that, in the context of market activities and investment banking, clients are predominantly legal persons or regulated entities, for which the risk of fraud or document falsification is generally lower than in the retail banking sector. In this context, the modalities for implementing such verification measures should remain at the discretion of obliged entities, based on their risk assessment.

In light of the above, AMAFI proposes the corresponding amendments.

### **Amendment 7**

#### **Article 6 (6.) – Documents for the verification of the identity**

##### *Text proposed by the AMLA*

6. Electronic identification means, as described in Article 7(1), shall be permitted to verify the identity of the natural person in a face-to-face context where they are available to the customer, any person purporting to act on behalf of the customer, and the natural persons on whose behalf or for the benefit of whom a transaction or activity is being carried out.

##### *AMAFI Amendment*

6. Electronic identification means, as described in Article 7(1), **shall can** be permitted to verify the identity of the natural person in a face-to-face context where they are available to the customer, any person purporting to act on behalf of the customer, and the natural persons on whose behalf or for the benefit of whom a transaction or activity is being carried out.

##### Justification

The current draft may be interpreted as imposing an obligation on obliged entities to accept electronic identification when a customer presents a digital document in a face-to-face context.

This interpretation would be particularly problematic insofar as not all financial institutions are currently equipped to handle such digital processes, which would require potentially significant IT developments and investments.

AMAFI therefore proposes to replace “shall be permitted” with “can be permitted”.

## **Clarification 1**

### **Article 10 - Reasonable measures for the verification of the beneficial owner**

Regarding the procedures for verifying the identity of the beneficial owner using reasonable measures, AMAFI considers that clarifications should be provided by AMLA on the following points.

**1. 'up-to-date information from credit or financial institutions as defined in Article 3, paragraphs (1) and (2), of Regulation (EU) 2024/1624. The collected information shall confirm that the beneficial owner or the person on whose behalf or for the benefit of whom a transaction or activity is being carried out has been identified and verified by the respective institution' (RTS, art.10(b)(iii)).**

The RTS draft offers the possibility to verify the identity of beneficial owners and collect up-to-date information from other financial institutions. AMAFI wonder what the legal framework is governing the sharing of information between obliged entities concerning beneficial owners.

Additionally, how could the practice of sharing information be compliant with the banking secrecy requirements applicable in certain countries, such as France?

AMAFI considers that AMLA should provide clarifications on these matters (RTS, art.10(b)(iii)).

**2. 'Documents from the legal entity or the legal arrangement where the beneficial owner is named, and where the identity of the named person is certified by persons that are authorized for document certification purposes' (Draft RTS, art. 10(b)(iv))**

AMAFI would welcome clarification by AMLA of the terms "by persons that are authorized for document certification purposes".

Moreover, as stated in article 1 of the draft RTS, it should be possible to apply a risk-based approach and adapt the due diligence depending on the client's risk. Requiring a certified document appears not proportionate in a low or standard risk relationship, as such certification is time-consuming to obtain and costly for customers. Certification should be mandated only for high-risk customers, as per the current practice.

## Amendment 8

### Article 12 – Understanding the ownership and control of structure of the customer in the case of complex corporate structure

#### Text proposed by the AMLA

1. To understand the ownership and control structure of the customer in accordance with Article 20(1), point (b), of Regulation (EU) 2024/1624, obliged entities shall treat an ownership and control structure as a complex corporate structure where there are three or more layers between the customer and the beneficial owner and, in addition, more than one of the following conditions is met:

- (a) there is a legal arrangement or a similar legal entity such as a foundation in any of the layers;
- (b) the customer and any legal entities present at any of these layers are registered in jurisdictions outside the EU;
- (c) there are nominee shareholders or nominee directors involved in the structure;
- (d) the structure obfuscates or diminishes transparency of ownership with no legitimate economic rationale or justification.

2. In the case of complex corporate structures as referred to in paragraph 1, obliged entities shall, where necessary to complement the measures undertaken pursuant to Article 11, obtain additional information, such as an organigram.

3. Obligated entities shall take risk-sensitive measures to satisfy themselves that the information obtained is accurate.

#### AMAFI Amendment

1. To understand the ownership and control structure of the customer in accordance with Article 20(1), point (b), of Regulation (EU) 2024/1624, obliged entities ~~shall treat an ownership and control structure as a complex corporate structure where there are three or more layers between the customer and the beneficial owner and, in addition, more than one of the following conditions is met:~~ may use, in accordance with the risk-based approach, the following criteria to consider an ownership and control structure to be complex:

- (a) there are three or more layers between the customer and the beneficial owner**
- ~~(a)~~ **(b) there is a legal arrangement or a similar legal entity such as a foundation in any of the layers;**
- ~~(b)~~ **(c) the customer and any legal entities present at any of these layers are registered in jurisdictions outside the EU**

**third countries with significant strategic deficiencies or compliance weaknesses in their national AML/CFT regimes, as listed by the European Commission pursuant to Article 29 to 31 of the Regulation 2024/1624;**

- ~~(c)~~ **(d) there are nominee shareholders or nominee directors involved in the structure;**
- ~~(d)~~ **(e) the structure obfuscates or diminishes transparency of ownership with no legitimate economic rationale or justification.**

2. In the case of complex corporate structures as referred to in paragraph 1, obliged entities shall, where necessary to complement the measures undertaken pursuant to Article 11, obtain additional information, such as an organigram.

3. Obligated entities shall take risk-sensitive measures to satisfy themselves that the information obtained is accurate.

### Justification

This article of the RTS defines complex ownership and control structures of the customer.

The definition of a complex structure as one which has “three or more layers” - even when qualified by the conditions set out in Article 11 (1) draft RTS – is too broad, noting that multinational companies and large financial entities typically have multiple layers of ownership. Indeed, more than 50% of AMAFI members’ clients could fall within this definition, even when their activities would present only a low or moderate risk of money laundering and terrorist financing.

A structure comprising more than three layers and the registration of entities in different jurisdictions outside the EU may be justified and does not appear complex in business life. In practice, these different levels of ownership or control may be justified by legitimate economic or legal objectives ( compliance with local regulations, ...), and registration in different jurisdictions may be justified by the size of the company, its presence in different markets, or legitimate economic or legal objectives.

The complexity of a detention structure stems more from its opacity than from the number of layers it comprises. AMAFI recommends that the assessment of complexity be under the responsibility of obliged entities, as this would allow them to apply specialist knowledge and experience to identify (and allocate resources to) cases that involve genuinely complex structures.

To avoid creating complexity and blurring the specific attention to be paid on unusual complex structures, additional measures should be applied only after the assessment of the overall structure concludes that the complexity does not seem justified or is unusual, which should lead to the application of enhanced due-diligence measures».

This would also allow a more efficient use of scarce resources to better advance the fight against financial crime.

Furthermore, in order for the criterion relating to registration in different jurisdictions to be relevant, it should be limited to cases of registration in high-risk countries.

Consequently, AMAFI proposes the above amendments.

## Amendment 9

### Article 13 – Information on senior managing officials

#### Text proposed by the AMLA

#### AMAFI Amendment

In relation to senior managing officials as referred to in Article 22(2), second subparagraph of Regulation (EU) 2024/1624, obliged entities shall:

- (a) collect the same information as the information they would collect for beneficial owners. Obligated entities may decide to obtain the address of the registered office of the legal entity instead of the senior managing official's residential address and country of residence;
- (b) verify the identity of senior managing officials in the same way as they would for beneficial owners.

In relation to senior managing officials as referred to in Article 22(2), second subparagraph of Regulation (EU) 2024/1624, obliged entities shall:

- ~~(a) collect the same information as the information they would collect for beneficial owners. Obligated entities may decide to obtain the address of the registered office of the legal entity instead of the senior managing official's residential address and country of residence;~~
- ~~(b) verify the identity of senior managing officials in the same way as they would for beneficial owners.~~

#### Justification

Since SMOs are not beneficial owners, as stated in Recital (125) of the AMLR and Recital (9) of the RTS CDD, they cannot act as such: SMOs manage the legal entity, but do not personally own or control it. Article 13 of the draft RTS does not however recognise this distinction, requiring obliged entities to “collect the same information as for beneficial owners” pursuant to Article 22 (2) AMLR.

Given the disparity in roles, responsibilities, benefits and degree of control, it is disproportionate to require regulated entities to collect, for SMOs, the same information as that collected for beneficial owners. The data elements to be collected for SMOs should be commensurate with the extent to which they may exercise control over the entity, in keeping with the risk-based approach. The obligation to collect ID documents should be removed. Moreover, considering that fraud is on a significant rise, the collection of identity document numbers (in addition to other information, particularly nationality) creates a risk of an increase in “fake documents” in circulation, enabling fraudsters to impersonate the SMOs (i.e., directors) of legal entities.

Furthermore, obliged entities are not required to screen UBOs as provided for in Article 20(1)(d) of the AMLR.

**Accordingly, AMAFI advocates for a reduction of the requirements relating to the identification and verification of the identity of SMO.**

Moreover, clarifications should be provided on the following provision: *“Where the performance of identity verification referred to in the second subparagraph may tip off the customer that the obliged entity has doubts regarding the beneficial ownership of the legal entity, the obliged entity shall abstain from verifying the senior managing officials’ identity and shall instead record the steps taken to ascertain the identity of the beneficial owners and senior managing officials. Obligated entities shall keep records of the actions taken as well as of the difficulties encountered during the identification process, which led to resorting to the identification of a senior managing official” (AMLR, Art. 22(2)).*

The notion of doubt is not defined. As Recital (10) of the RTS CDD provides that *«finding it difficult to identify the beneficial owner, for example in cases of complex corporate structures, does not amount to ‘doubts’»*, a definition of “doubt” is necessary for legal security and to avoid the risk of tipping-off.

Which situations of “tipping off” does this paragraph cover?

Which indicators may tip off a client to the fact that the entity is subject to doubts regarding its beneficial owner(s)?

Moreover, the link between this provision and Article 13 of the draft RTS is unclear. The fact that obliged entities request the same extensive information on SMOs (as required by Article 13) as for beneficial owners could indicate that the obliged entity has doubts regarding the beneficial ownership of the legal entity. Such a request, when the beneficial owner has already been reported, may alert the client to the obliged entity’s suspicions and to the possibility that it may file a suspicious activity report.

Finally, this provision could be inconsistent with the intention not to provide regulated services/products if the regulated entity is unable to understand its ownership. This appears to be an authorisation to accept opaque entities in the EU.

## **Amendment 10**

### **Article 16 - Identification and verification of the person purporting to act on behalf of the customer**

#### *Text proposed by the AMLA*

In relation to the identification and verification of the person purporting to act on behalf of the customer as referred in Article 22 of Regulation (EU) 2024/1624, and in addition to the information to be collected pursuant to the relevant provisions of Section 2, obliged entities shall obtain information which enables them to verify the existence and extent of the power of representation.

#### *AMAFI Amendment*

**1.** In relation to the identification and verification of the person purporting to act on behalf of the customer as referred in Article 22 of Regulation (EU) 2024/1624, and in addition to the information to be collected pursuant to the relevant provisions of Section 2, obliged entities shall obtain information which enables them to verify the existence and extent of the power of representation.

**2. The legal representative of a legal entity client should not be considered a person purporting to act on behalf of that client where they have delegated their powers, without prejudice to the obligations to identify that representative pursuant to point (b) of Article 22(1) of the Regulation.**

**3. Obligated entities should not be required to verify the identity of individuals purporting to act on behalf of the customer when such individuals are acting solely in their capacity as employees of a legal person customer, and within the ordinary scope of their employment duties, without prejudice to the obligation to verify the existence and extent of the power of representation.**

#### Justification

Article 22(1) of the AML Regulation imposes an obligation to collect certain information not only on the customer, but also on any person purporting to act on behalf of the customer. However, this latter concept not being defined in either the AML Regulation or the draft RTS, AMAFI considers it essential to provide further clarification when it is applied to legal entities clients. Such clarification will help mitigate the risk of divergent interpretations and ensure that the provision is applied when relevant.

This concept encompasses both cases where the person is lawfully authorised to act and where it is not. Wholesale capital markets exclusively involve professional clients within the meaning of MiFID II (regulated and authorised entities, large companies, institutional investors). The individuals acting on behalf of the customer are strictly those who are duly authorised to do so. This is actually verified by investment firms, not primarily for AML/TF purposes, but as a precaution against legal risks and fraud. Several safeguards are in place to this effect such as the legal entity client provides an official list of authorised signatories empowered to place orders on its behalf, and access to trading systems is secured through strong technical and procedural safeguards. Investment firms are moreover subject to stringent security obligations under various regulatory frameworks, notably MiFID II/MiFIR, IFR/IFD, and DORA. Article 22 should therefore not be used to add another layer of information collection on individuals not operationally involved in the business relationships, as further explained below.

The concept of “*any person purporting to act on behalf of the customer*” should thus be further specified to ensure it is applied when relevant.

### Exclusion of legal representatives of legal entities

Firstly, it should be made clear that a “*person purporting to act on behalf of the client*” does not include the legal representatives of client legal entities when they have delegated their power to enter into a business relationship or to trade to an employee. Legal representatives of entities must in any case be identified during the identification phase (*AMLR, Art. 22(1)(b)*). The collection of information mandated under Art. 22(1) for a person purporting to act on behalf of the client should therefore not apply to legal representatives when they are not effectively engaged in the business relationships with the investment firm.

The concept should rightfully apply to those persons who not only have the power to act vis-à-vis third parties, but also actually use it vis-à-vis the obliged entity. The mere mention of a person on a contract or a delegation of authority should not in itself justify identification measures. The means and resources allocated by obliged entities should be focused solely on those persons acting on behalf of the customer.

### Exclusion of employees acting within the scope of their duties

Employees of a legal person customer do not act independently but under the authority and control of the legal person customer, who remains the principal in the business relationship.

The draft RTS should therefore clarify that: “*Obliged entities should not be required to verify the identity of individuals purporting to act on behalf of the customer when such individuals are acting solely in their capacity as employees of a legal person customer, and within the ordinary scope of their employment duties*”.

Requiring obliged entities to identify and verify every employee interacting on behalf of a corporate customer would be disproportionate, operationally burdensome, and misaligned with the risk-based approach underpinning the AML frameworks, particularly in the context of a business relationship with a professional client or an eligible counterparty within the meaning of MiFID II.

## Amendment 11

### Article 20 – Minimum requirements for the identification and verification of the beneficial owner or senior managing officials in low-risk situations

#### Text proposed by the AMLA

1. In situations of low risk, obliged entities shall obtain at least the following information to identify the customer and the person purporting to act on behalf of the customer:

#### AMAFI Amendment

1. In situations of low risk, obliged entities shall obtain at least the following information to identify the customer and the person purporting to act on behalf of the customer:

- (a) [...]
- (b) for a legal entity and other organisations that have legal capacity under national law:
- i. the legal form;
  - ii. the registered name of the legal entity and its trade name where it differs from its registered name;
  - iii. the address of the registered office; and
  - iv. where available, the registration number or tax identification number, or the legal entity identifier.

[...]

- (a) [...]
- (b) for a legal entity and other organisations that have legal capacity under national law:
- i. the legal form;
  - ii. the registered name of the legal entity and its trade name ~~where it differs from its registered name;~~ **but only if this information is available in the commercial register;**
  - iii. the address of the registered office; and
  - iv. where available, the registration number or tax identification number, or the legal entity identifier.

[...]

### Justification

The commercial name does not always appear in the commercial register, depending on the country. Moreover, customers may hold multiple commercial names depending on their geographical location. Therefore, AMAFI considers that this information should be collected when it appears in the commercial register.

AMAFI proposes the above amendment.

## **Amendment 12**

### **Article 21– Minimum requirements for the identification and verification of beneficial owner or senior managing officials in situations of low risk**

#### *Text proposed by the AMLA*

1. To identify the beneficial owner or senior managing officials in situations of low risk, obliged entities shall consult one of the following sources of information:
  - (a) the information contained in the central register, business or company register;

#### *AMAFI Amendment*

1. To identify the beneficial owner or senior managing officials in situations of low risk, obliged entities shall consult one of the following sources of information:
  - (a) the information contained in the central register, business or company register;

- (b) any information provided by the customer, including information that obliged entities may already hold;
- (c) any publicly available information contained in a reliable independent open source;
2. To verify the identity of the beneficial owner or senior managing officials in situations of low risk, the obliged entity shall consult one of the sources of information listed in paragraph (1), points (b) or (c), that was not used for identification purposes.
- (b) any information provided by the customer, including information that obliged entities may already hold;
- (c) any publicly available information contained in a reliable independent open source.
- ~~2. To verify the identity of the beneficial owner or senior managing officials in situations of low risk, the obliged entity shall consult one of the sources of information listed in paragraph (1), points (b) or (c), that was not used for identification purposes.~~
- 2. The obliged entity is not required to identify the beneficial owner of the business relationship where the customer is:**
- (a) a company whose securities are admitted to trading on a regulated market in a Member State of the European Union, in another State party to the Agreement on the European Economic Area or which is subject to disclosure requirements in accordance with EU law or which is subject to equivalent international standards ensuring adequate transparency of information on the ownership of capital, which the obliged entity is able to prove to the supervisory authority;
- (b) a subsidiary more than 75% owned by the entities referred to in point (a), or by an obliged financial entity established in the EU or the European Economic Area, where the risk of money laundering and terrorist financing appears low and in the absence of any suspicion.

### Justification

#### **Exemption from the identification of the beneficial owner for certain listed companies**

Entities subject to the obligation should not be required to identify the beneficial owners of clients that are listed companies on a regulated market in a Member State of the European Union, in another State party to the Agreement on the European Economic Area or which is subject to disclosure requirements in accordance with EU law or which is subject to equivalent international standards ensuring adequate transparency of information on the ownership of capital. These companies are subject to disclosure requirements (under stock exchange rules, law or other binding means) that provide for sufficient transparency of beneficial owners.

In any case, obliged entities do not have the possibility of consulting the register to identify and verify the identity of the beneficial owner. This is because these companies are not subject to the obligation to identify their beneficial owner (*AMLR, Art. 65*). The European legislator has indeed considered that, for these entities, the identification and registration of beneficial owners were not necessary and that the same level of transparency could be achieved through means other than the identification of beneficial owners (*AMLR, Récital 127*).

The same exemption should apply to subsidiaries more than 75% owned by the entities referred to in point (a), or by an obliged financial entity established in the EU or the EEA, where the risk of money laundering and terrorist financing appears low and in the absence of any suspicion. Furthermore, due to the transparency requirements imposed on them, listed companies present a lower risk of money laundering, as recognised by the AMLR (*AMLR, Annex II*).

#### **Removal of the requirement to verify the identity of the beneficial owner**

In low-risk situations, while obliged entities would still identify the beneficial owner, requiring systematic verification of their identity would be disproportionate.

In such cases, the identification of the beneficial owner, based on information provided by the customer and/or reliable sources, is sufficient to ensure an adequate level of transparency regarding the ownership structure.

Imposing additional verification requirements, in low-risk situations, would create unnecessary operational burdens without providing a commensurate benefit in terms of ML/TF risk mitigation for the difference with the requirement in standard-risk situation (*Draft RTS, art. 10*)

Removing the verification step for low-risk situations appears consistent with the principle of proportionality and the risk-based approach stated in the Article 1 of the RTS.

In line with the risk-based approach enshrined in EU AML/CFT legislation, obliged entities should therefore be allowed to adapt the extent of verification measures, including waiving the verification of the beneficial owner's identity where the risk is demonstrably low.

Consequently, the AMAFI proposes the above amendment.

## Clarification 2

### Article 22– Sectoral simplified measures with respect to pooled accounts

#### Expected clarification

It would be welcome for AMLA to clarify the concept of “pooled accounts” and specify the situations referred to in this article, as this term is defined neither in the AMLR nor in the draft RTS.

## Amendment 13 and clarification 3

### Article 23– Customer identification data updates in low-risk situations

#### *Text proposed by the AMLA*

1. Where, in cases with a low degree of ML/TF risk, obliged entities reduce the frequency of customer identification updates as referred to in Article 33(1), point (b), of Regulation (EU) 2024/1624, obliged entities shall monitor the relationship in order to be satisfied that:

- (a) there is no change in the circumstances relevant for the assessment of the business relationship with the customer;
- (b) no event took place which would require an information update;
- (c) and no suspicious and/or unusual transactions or activities were identified that are inconsistent with a low-risk relationship.

2. In any case, obliged entities shall update the customer identification data in accordance with Article 26(2), point (b), of Regulation (EU) 2024/1624.

#### *AMAFI Amendment*

1. Where, in cases with a low degree of ML/TF risk, obliged entities reduce the frequency of customer identification updates as referred to in Article 33(1), point (b), of Regulation (EU) 2024/1624, obliged entities shall monitor the relationship in order to be satisfied that:

- (a) there is no change in the circumstances relevant for the assessment of the business relationship with the **natural person** customer;
- (b) no event took place which would require an information update;
- (c) and no suspicious and/or unusual transactions or activities were identified that are inconsistent with a low-risk relationship.

2. In any case, obliged entities shall update the customer identification data in accordance with Article 26(2), point (b), of Regulation (EU) 2024/1624.

#### Justification

It would be welcome for the AMLA to clarify the concept of “*there is no change in the relevant circumstances of the customer*” (*Draft RTS, art. 23(1)(a)*), as it may be particularly difficult to assess such a change in the situation of professional clients (institutions, large companies, etc.). Therefore, this requirement should be limited to retail customers.

Consequently, AMAFI proposes the above amendment.

